

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 124 OF 2006

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 01, 2006.

Heard Shri Kotwal, learned counsel for
the petitioner and Shri Deo, learned council for
the respondents.

The debate is over deletion of word
“family” from issue No.4 as framed in Special
Civil Suit No. 354 of 1996.

Issue No.4 as framed is whether suit
property is joint family property ? By impugned
order it has been modified to read Whether Suit
property is joint property ?

I have heard parties at length and the
following order is being passed by consent.

Issue No.4 will be retained as it is i.e.
whether suit property is joint family property ?
However, the Court will answer it in relation to

lease hold rights on plot No.19 which has been given on lease by the original owners to the parties to the suit. The said decision shall not be in relation to status of said plot as joint family property.

It is further brought to the notice of this Court that the husband of present petitioner, who is stated to be copacener, has already filed a separate suit challenging the Will of his father on the ground that property is joint family property and his father could not have executed the Will thereof. The question whether Plot No. 19 is joint family property or not arises for consideration in that suit. The respondents before this Court are parties in said suit filed by husband of petitioner. The parties agree that the decision about the status of property involved in said suit including Plot No.19 will be reached independently on the basis of evidence adduced therein and answer to present issue No.4 in Special Civil Suit No. 354 of 1996 shall not in any way prejudice or eclipse the said finding.

The learned counsel for the respondents states that in said suit, an application under Order 7, Rule 11 (d) of C.P.C.

is already filed and the present order should not be taken to mean that the objection raised therein stands waived or concluded in any way. This Court has not considered that controversy and the orders passed do not have any bearing on said application moved by present respondents in the suit of husband of the petitioner.

In view of this order, writ petition becomes infructuous. It is accordingly disposed of.

Both the parties state that suit was made time bound and said time is to expire within one week.

Under the circumstances, time is extended further by three months in the interest of justice.

JUDGE

*GS.